

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

ERNESTO CAPPONE,

Plaintiff,

v.

Case No.: 1:16-cv-07170-RRM-PK

WILLIAM MORRISSEY,  
MICHAEL GALLO,  
KEVIN KIM,  
LIBERTY MERCHANT GROUP,  
MERCHANT SOLUTIONS GROUP,  
And WORLD BUSINESS LENDERS,

Defendants.

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**PLAINTIFF ERNESTO CAPPONE'S  
RESPONSE TO ORDER TO SHOW CAUSE**

COMES NOW, the Plaintiff, ERNESTO CAPPONE, by and through its counsel of record, hereby files this, his Response to the Order to Show Cause entered by the Court on June 29, 2017, and in support thereof states the following:

1. On May 1, 2017, Plaintiff served Defendants MERCHANT SOLUTIONS GROUP and LIBERTY MERCHANT GROUP with a Complaint and summons requiring a response to be filed by May 22, 2017. *See DE# 14,15.*

2. On May 3, 2017, Plaintiff served Defendant WILLIAM MORRISSEY with a Complaint and summons requiring a response to be filed by May 24, 2017. *See DE# 13.*

3. After the time expired for the Defendants WILLIAM MORRISSEY, MERCHANT SOLUTIONS GROUP and LIBERTY MERCHANT GROUP (hereinafter referred to collectively as “Defendants”) to file their answer or responsive pleading to Plaintiff’s complaint, Plaintiff attempted to make further contact with aforementioned Defendants with no success.

4. Thereafter, this Court directed to Plaintiff to show cause by July 6, 2017 why aforementioned Defendants should not be dismissed from the instant action for failure of Plaintiff to seek a certificate of default with the Clerk of this Court.

5. On June 30, 2017, Plaintiff filed a motion for default by the Clerk, seeking a certificate of default by the Clerk as to Defendants WILLIAM MORRISSEY, MERCHANT SOLUTIONS GROUP and LIBERTY MERCHANT GROUP. That motion or request is pending before the Clerk for disposition. *See, DE# 28.*

6. Plaintiff now files this, his response to the Court’s show cause order.

7. As detailed above, Plaintiff attempted further contact with Defendants in order to encourage said Defendants to respond to the Complaint. In so doing, Plaintiff did not move for a certificate of default immediately. Rather, it was

Plaintiff's intent to determine whether Defendants WILLIAM MORRISSEY, MERCHANT SOLUTIONS GROUP and LIBERTY MERCHANT GROUP were going to retain counsel or make an intentional choice not to respond to the Plaintiff's complaint. The silence by said Defendants make clear they chose not to defend against the Plaintiff's complaint.

8. Plaintiff has now filed a motion for default with the Clerk, requesting the issuance of the required certificate of default against WILLIAM MORRISSEY, MERCHANT SOLUTIONS GROUP and LIBERTY MERCHANT GROUP. This request is pending before the Clerk.

9. Based on the foregoing facts, and given Plaintiff has now sought a certificate of default by the Clerk, Plaintiff requests this Court not to recommend dismissal of the aforementioned Defendants in the instant case.

**WHEREFORE**, Plaintiff, ERNESTO CAPPONE respectfully requests that this Court not recommend dismissal of or dismiss the Defendants WILLIAM MORRISSEY, LIBERTY MERCHANT GROUP, and MERCHANT SOLUTIONS GROUP from the instant case based on the foregoing facts; and enter an order concluding dismissal of the aforementioned Defendants is not warranted. Plaintiff requests other relief this Court deems proper and just under the circumstances.

July 3, 2017

Respectfully submitted,

//ss// Peter S. Smith

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### **CERTIFICATE OF SERVICE**

I, PETER SMITH, hereby certify that a true and correct copy of the foregoing was served on opposing counsel named below by ECF/PACER and on pro se party **Kevin Kim** 1651 Unionport Road Bronx, NY 10462 by placing same in the U.S. mails postage prepaid 1<sup>st</sup> class on this 3rd day of July, 2017.

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//ss// Peter S. Smith

Peter S. Smith,